

STATE OF MAINE

v.

DONALD C. SMITH JR.

Submitted on Briefs November 29, 2017
Decided December 7, 2017

Panel: SAUFLEY, C.J., and MEAD, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Donald C. Smith Jr. appeals from a judgment of conviction for criminal operating under the influence (Class C), 29-A M.R.S. § 2411(1-A)(B)(2) (2016), unlawful possession of scheduled drugs (Class C), 17-A M.R.S. § 1107-A(1)(B)(1) (2016), and violating a condition of release (Class E), 15 M.R.S. § 1092(1)(A) (2016), entered by the trial court (Kennebec County, *L. Walker, J.*) following a bench trial. Smith contends that the motion court (*Alexander, J.*) erred when it denied his motion to suppress evidence and that the trial court (*L. Walker, J.*) abused its discretion when it denied his motion to reconsider the ruling on the motion to suppress.

Contrary to Smith's contention, the motion court did not err in denying his motion to suppress because police observations supplied probable cause to believe that his senses had been "affected to the slightest degree." *State v. Morrison*, 2015 ME 153, ¶ 8, 128 A.3d 1060. Also contrary to Smith's contention, the trial court did not err when it denied his motion to reconsider the ruling on his motion to suppress. *See State v. Hayford*, 412 A.2d 987, n.7 (Me. 1980); *State v. Cookson*, 2003 ME 136, ¶ 28, 837 A.2d 101. The arresting officer's trial testimony that she made a mistake when she failed to conduct

two passes of each eye in conducting the horizontal gaze nystagmus test did not materially depart from her testimony at the suppression hearing that she could not recall whether two passes were required, and there was sufficient evidence to establish probable cause to arrest. *See Cookson*, 2003 ME 136, ¶ 32, 837 A.2d 101.

The entry is:

Judgment affirmed.

Clifford B. Strike, Esq., Strike, Gonzales, & Butler Bailey, Portland, for appellant Donald C. Smith

Maeghan Maloney, District Attorney, and Alisa Ross, Asst. Dist. Atty., Prosecutorial District IV, Augusta, for appellee State of Maine